

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

**18 VAC 30-20-10 et seq. Regulations Governing the Practice of Audiology and
Speech-Language Pathology**

REGISTRAR'S SUBMISSION PACKAGE

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Title 54.1, Chapter 24 and Chapter 26 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations.

§ 54.1-2603 establishes the requirement for the licensure of school speech-language pathologists and specifies the qualifications which must be met.

2. Statement of Purpose:

Amendments are proposed pursuant to a statutory mandate in Chapters 967 and 1005 of the 1999 Acts of the Assembly which provide for the Board to license school speech-language pathologists upon review of credentials and payment of an application fee. Regulations of the Board for licensure and practice are promulgated to protect the health, safety and welfare of children who are in the need of speech-language pathology services.

3. Substance of Regulations:

18 VAC 30-20-10. Definitions.

A definition for "school speech-language pathologist" is added to clarify that it is a person licensed pursuant to § 54.1-2603 to provide speech-language pathology services in public school divisions.

18 VAC 30-20-80. Fees.

The proposed amendment would set the application fee at \$50, which is one-half the application fee for persons who are fully licensed to practice. The renewal and other fees have not been amended and would be the same for both categories of licensee.

18 VAC 30-20-170. Requirements for licensure.

The proposed amendments establish the requirements for licensure as specified in the Code of Virginia.

18 VAC 30-20-180. Application process.

An amendment is proposed to add the school speech-language pathologists to the requirements for submission of an application for licensure.

18 VAC 30-20-230. Prohibited conduct.

A proposed amendment would include in the section on prohibited conduct the practice of speech-language pathology outside the public school setting by a school speech-language pathologist.

4. Issues of the Regulation:

1) Qualifications for licensure.

Chapters 967 and 1005 of the 1999 Acts of the Assembly amended the practice act for audiology and speech-language pathology by adding section B to §54.1-2603, which mandates that the Board promulgate regulations for the licensure of school speech-language pathologists. The Code is very specific that the Board shall issue a license "without examination" to persons "licensed by the Board of Education with an endorsement in speech-language pathology and a master's degree in speech-language pathology." Therefore, the Board was not authorized to impose additional criteria or qualifications for licensure, and the adopted regulations follow the specific language of the law.

2) Establishment of fees for school speech-language pathology.

Since the credentials required for licensure of school speech-language pathologist are more limited than those required for persons licensed for independent practice, there should be less board member and staff time spent in review. Therefore, the Board determined that a lesser application fee was appropriate. The application fee for the school speech-language pathologist is set at \$50, while the regular application fee is set at \$100. Renewal fees, however, must cover the majority of expenditures of the board, including costs for investigations, disciplinary hearings, board meetings, mailings, and board staff. Since the school licensees will likely incur those costs at the same rate as current licensees, the Board determined that the current renewal fee of \$60 per biennium was appropriate.

3) Scope of practice for school speech-language pathologists.

During the development of regulations, questions were raised about the scope of practice for school speech-language pathologists. While the statute is clear that their practice is limited to the public schools of the Commonwealth, but it does not further specify the scope of activities which are or are not permitted. However, the practice of speech-language pathology is defined in § 54.1-2600, so it is presumed that persons practicing with the school license would be practicing within that scope of practice definition. Therefore, the Board determined that no additional amendments were necessary or authorized to clarify the scope of practice for school speech-language pathologists, who are also subject to disciplinary action for unprofessional conduct if they practice without skill and safety.

Advantages to the licensees and the school systems:

Persons seeking licensure as school speech-language pathologists will only need to meet the requirements of law - a master's degree in speech-language pathology and licensure from the Department of Education with an endorsement in the field. There is very little benefit to the individuals holding this license, since it will not entitle them to practice outside the public schools where they are already employed.

The advantage of these regulations, which simply establish a license as required by law, is for the employers of the licensees who will seek Medicaid reimbursement for their services. If the Health Care Financing Authority does reimburse for services rendered by persons holding this limited license, schools will have significant additional dollars with which to pay for mandated services to children.

Disadvantages to the licensees:

For licensees, there will be some additional costs - \$50 to apply for the license and \$60 to renew the license every two years. In addition, persons holding the new license will be subject to the laws and regulations of the Board of Audiology and Speech-Language Pathology as well as the rules and policies of the Board of Education and the local school systems.

Advantages or disadvantages to the public:

The advantages of this license to the public are the possibility that additional Medicaid funding will be made available to support speech-language services thereby increasing the availability of such services to children in the public schools. In addition, local school funds that would be required to pay for such services may be available for other needs.

Advantages or disadvantages to the agency:

The Board may have to license and regulate as many as 1,000 new licensees, but there will be additional income through fees to support that activity. There should be very little impact on the Enforcement division, since the disciplinary load for this board is typically very low.

5. Estimated Impact of the Regulations

A. Projected number of persons affected and their cost of compliance:

There are approximately 1,000 persons who hold licensure from the Department of Education who could be affected by these regulations.

The cost for compliance will depend on whether any of persons licensed under the Department of Education will actually apply for the licensure. There has been some uncertainty about whether the federal agency, Health Care Financing Authority (HCFA), will reimburse school divisions for speech-language pathology services of persons holding this new limited license under the Board of Audiology and Speech-Language Pathology. If it does not, there would be no incentive for the persons to seek this license.

It is also unknown whether local school divisions will financially assist school speech-language pathologists in becoming licensed, since the benefit of such licensure accrues solely to the school system and not to the licensee.

B. Cost to the agency for implementation:

Impact on Board revenue:

If the estimated 1,000 persons who currently work in the public schools as speech-language pathologists all sought licensure under the Board of Audiology and Speech-Language Pathology, there would be an increase of \$50,000 in board revenues for application fees and approximately \$60,000 additional revenue each biennium from renewal fees.

Impact on Board expenditures:

The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

There will be some additional on-going costs for inclusion of these persons in mailings of regulations and newsletters to licensees of the board. In addition, there may be some additional costs for disciplinary hearings. While the complaint and sanction rates for professions regulated by this board are the lowest in the Department, the addition of several hundred new licensees increases the probability that the number of investigative and disciplinary cases will increase. There is no estimate of how much additional costs would be incurred.

C. Cost to local governments:

Unless the local school systems voluntarily provide financial support for licensure of school speech-language pathologists, there will be no impact of these regulations on local government.

D. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)

E. Agency Response:

c. Source of the legal authority to promulgate the contemplated regulation.

18 VAC 30-20-10 et seq. Regulations Governing the Practice of Audiology and Speech-Language Pathology was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for licensure, the Code provides a mandate for this licensure in:

§ 54.1-2603. License required.

- A. *In order to practice audiology or speech pathology, it shall be necessary to hold a valid license.*
- B. *Notwithstanding the provisions of subdivision 2 of § 54.1-2601 or any Board regulation, the Board of Audiology and Speech-Language Pathology shall license, as school speech-language pathologists, persons licensed by the Board of Education with an endorsement in speech-language pathology and a master's degree in speech-language pathology. The Board of Audiology and Speech-Language Pathology shall issue licenses to such persons without examination, upon review of credentials and payment of an application fee in accordance with regulations of the Board for school speech-language pathologists. Persons holding such licenses as school speech-language pathologists, without examination, shall practice solely in public school divisions; holding a license as a school speech-language pathologist pursuant to this section shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Audiology and Speech-Language Pathology to offer to the public the services defined in § 54.1-2600. The Board shall issue persons, holding dual licenses from the Board of Education with an endorsement in speech-language pathology and from the Board of Audiology and Speech-Language Pathology as school speech-language pathologists, a license which notes the limitations on practice set forth in this subsection. Persons who hold licenses issued by the Board of Audiology and Speech-Language Pathology without these limitations shall be exempt from the requirements of this subsection.*

d. Letter of assurance from the office of the Attorney General.

See attached.

e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.

The Notice of Intended Regulatory Action was published on June 21, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board; there was no comment received during the 30-day comment period.

f. Changes to existing regulations.

18 VAC 30-20-10. Definitions.

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18 VAC 30-20-80. Fees.

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18 VAC 30-20-230. Prohibited conduct.

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g. Statement of reasoning for the regulations.

Chapters 967 and 1005 of the 1999 Acts of the Assembly provide a specific mandate in § 54.1-2603 for the **licensure of school speech-language pathologists** and for the Board to license upon review of credentials and payment of an application fee in accordance with regulations of the Board. Regulations for the licensure of school speech-language pathologists by the Board were adopted in accordance with amended provisions of § 54.1-2603.

Since the legislation mandating such licensure included an enactment clause directing the Boards of Education and Medical Assistance Services to promulgate regulations within 280 days,

the Board of Audiology and Speech-Language Pathology has acted as expeditiously as possible on the development of these regulations. The intent of the legislation cannot be implemented until those persons, currently employed in the public school system and thereby exempt from licensure, can be licensed by the Board of Audiology and Speech-Language Pathology to practice in a limited setting. The Board cannot act on licensure, as mandated by the statute, until it has regulations in place for the required review of credentials and payment of an application fee for school speech-language pathologists.

The Boards of Education and Medical Assistance Services must have regulations in place by January 12, 2000. As close to that date as possible, the Board of Audiology and Speech-Language Pathology would like to have final regulations in effect for licensure of school speech-language pathologists, so that the program can be implemented.

h. Statement on alternatives considered.

The Board did not consider alternatives to the promulgation of regulations as it was mandated by the statute to establish licensure for school speech-language pathologists. It did adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

During the development of regulations, the Board did address the following issues:

1) Qualifications for licensure.

Chapters 967 and 1005 of the 1999 Acts of the Assembly amended the practice act for audiology and speech-language pathology by adding section B to §54.1-2603, which mandates that the Board promulgate regulations for the licensure of school speech-language pathologists. The Code is very specific that the Board shall issue a license "without examination" to persons "licensed by the Board of Education with an endorsement in speech-language pathology and a master's degree in speech-language pathology." Therefore, the Board was not authorized to impose additional criteria or qualifications for licensure, and the adopted regulations follow the specific language of the law.

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3) Scope of practice for school speech-language pathologists.

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school speech-language pathologists. While the statute is clear that their practice is limited to the public schools of the Commonwealth, but it does not further specify the scope of activities which are or are not permitted. However, the practice of speech-language pathology is defined in § 54.1-2600, so it is presumed that persons practicing with the school license would be practicing within that scope of practice definition. Therefore, the Board determined that no additional amendments were necessary or authorized to clarify the scope of practice for school speech-language pathologists, who are also subject to disciplinary action for unprofessional conduct if they practice without skill and safety.

i. Statement of clarity.

Prior to the adoption of proposed regulations, the Legislative/Regulatory Committee discussed the amendments in open sessions, which included members of the public representing persons practicing in school settings. The clarity and reasonableness of the language which was adopted had the approval of the Board members and the Assistant Attorney General who worked with the Board in drafting regulatory language.

j. Schedule for review of regulation.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Audiology and Speech-Language Pathology (18 VAC 30-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Board will review this set of regulations in 2001 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

k. Anticipated Regulatory Impact

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Audiology and Speech-Language Pathology must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

There will be some additional on-going costs for inclusion of these persons in mailings of regulations and newsletters to licensees of the board. In addition, there may be some additional costs for disciplinary hearings. While the complaint and sanction rates for professions regulated by this board are the lowest in the Department, the addition of several hundred new licensees increases the probability that the number of investigative and disciplinary cases will increase. There is no estimate of how much additional costs would be incurred.

Projected cost on localities:

Unless local school boards voluntarily agree to pay for the licensure of school speech-language pathologists, there would be no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed school speech-language pathologists working in public school settings.

Estimate of number of entities to be affected:

There are approximately 1,000 persons who hold licensure from the Department of Education with an endorsement in speech-language pathology who could be affected by these regulations.